

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aviva Sports, Inc.,

Plaintiff,

v.

Civil No. 09-1091 (JNE/JSM)
ORDER

Fingerhut Direct Marketing, Inc., Menard, Inc.,
Kmart Corporation, Wal-Mart Stores, Inc., and
Manley Toys, Ltd.,

Defendant.

This matter is before the Court on a Report and Recommendation issued by the Honorable Janie S. Mayeron, United States Magistrate Judge, on January 8, 2013. After providing a thorough history of this case and outlining the numerous occasions on which Defendant Manley Toys, Ltd. (“Manley”) has failed to obey Court orders, the magistrate judge recommended that Plaintiff Aviva Sports, Inc.’s (“Aviva”) Motion for Sanctions be granted in part and denied in part. The magistrate judge recommended that default judgment be entered in Aviva’s favor on its Lanham Act, 15 U.S.C. § 1125(a) (2006), and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44 (2010), claims, for an amount to be determined by this Court upon proof of damages, and for attorney’s fees and costs at this Court’s discretion. The magistrate judge denied the motion for sanctions to the extent it sought a default judgment in Aviva’s favor on the patent infringement claims. The magistrate judge also recommended that judgment be entered in favor of Aviva and against Manley in the amount of \$362,438.00, representing the \$238,254 Manley was ordered to pay on January 3, May 9, and June 15, 2012, the \$121,184 Manley was ordered to pay on September 6, 2012, and the \$3,000 that Manley was ordered to pay on September 7, 2012. Manley objected to the Report and Recommendation, and Aviva responded. The Court has conducted a de novo review of the

record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation [Docket No. 722].

Therefore, IT IS ORDERED THAT:

1. Aviva's Motion for Sanctions [Docket No. 635] is GRANTED in part and DENIED in part.
2. Default judgment is entered in Aviva's favor on its claims under the Lanham Act and Minnesota Deceptive Trade Practices Act, for an amount to be determined by this Court upon proof of damages, and attorney's fees and costs at the Court's discretion.
3. Aviva shall submit to the Court proof of its damages on its Lanham Act claims. Manley is not permitted to oppose this submission.
4. Judgment is entered in favor of Aviva and against Manley in the amount of \$362,438.00, in addition to any amounts Aviva may be awarded for damages, fees, and costs associated with Aviva's claims under the Lanham Act and Minnesota Deceptive Trade Practices Act.

Dated: February 6, 2013

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge